

# The Spanish Model of Democracy Facing Trial

---

Joaquín Urías

2019-02-11T18:19:13

Tomorrow, on 12 February 2019,<sup>h</sup> the most momentous trial of Spanish recent history will start: The Supreme Court will adjudicate on the criminal liability of the leaders of the Catalan separatist movement for their actions with respect to the so-called independence referendum of 1 October 2017. But, for various reasons, the relevance of the trial goes much further. The formal vicissitudes of the entire process raise doubts about the impartiality of Spanish judiciary. The Spanish model of territorial state is at stake. But the case also raises questions about the democratic legitimization of institutions such as the judiciary or the king himself, as well as the shortcomings of the Spanish transition to democracy 40 years ago. Without doubt, this trial will shape the future of the Spanish Constitution.

The facts are well known: between September and October 2017, the parliament of Catalonia – where the secessionist parties had and have a majority – decided to unilaterally pursue independence. A referendum was organized to ask for a people's legitimation. It got banned by the Constitutional Court but it took place nevertheless. Despite the harsh intervention of the Spanish police, two million people participated; that is, half of the Catalan population with the right to vote. The so-called 'independence process' ended with a symbolic declaration of independence in the Catalan Parliament. Now nine persons are being tried for rebellion and disobedience, including almost the entire Government of Catalonia and the president of its Parliament at the time.

Procedurally, the trial raises several questions: the competence of the Supreme Court as first and only criminal instance for the case is dubious. The separatist leaders have been detained in a manner clearly opposed to what the Spanish Constitution establishes. In some cases, the detention order was made dependent on the defendant's public renunciation of their ideology. The detained Catalan separatists have been indicted for rebellion which is punishable by up to 30 years in prison but, according to the Spanish Criminal Code, requires an attempt to change the political system made through the violence, which never took place in the case of Catalonia. The Supreme Court also refused to accept the druling by a German court to extradite the Catalan separatist leader Carles Puigdemont on the condition that he will not be tried for rebellion...

The trial has an undeniable political component. So far, all the pronouncements of the court on the issue denote a clear positioning: the Supreme Court, composed by judges showing openly an extremely conservative ideology, seems to be determined to use this issue not only to attack the socialist government but, above all, to completely annihilate the secessionist movement in Catalonia. However, the importance of the case goes further.

The current Spanish model of political decentralization does not derive only from the Constitution but has developed as a result of numerous political and judicial decisions. The 1978's Constitution prefigured a system that could be called federal. Its article 2 clearly recognizes the right to self-government of the regions and nationalities of which Spain is composed. Further, the text enumerates an exhaustive group of exclusive competences of the states (called *comunidades autónomas*). However, these competences have been drastically reduced as a result of certain political and judicial decisions.

Because of this, the current model is closer to a merely administrative decentralization than to a federal state. This mutation of the expectations raised by the constitutional text has caused a lot of frustration which is now the base of the strength of nationalist and secessionist movements in Catalonia. After a failed attempt to restore these competences through the amendment of state constitutions, there are few legal ways to recover the original spirit of Spanish Constitution and fulfill the claims of some of the *Comunidades Autonomas*. Among them, the social pressure is especially strong in Catalonia, where big sectors of the population regard independence as the only way to achieve a certain degree of self-governance. The trend towards more power of the states and more federalization is palpable throughout Spain, though. The future of the Spanish system of territorial powers depends now on the success of the negotiations between the Spanish central government and Catalonia.

A harsh conviction of the secessionist leaders and their ideology, criminalizing such a massive social movement, risks closing all ways to dialogue. If the only Spanish answer to people who call for more political competences of the states is to send them to prison few chances remain for increasing social cohesion by recovering the idea of Spain as a political decentralized nation. The Spanish constitutional setup will definitively move towards centralization, and the consensus which existed at the origin of the 1978's constitution will be broken.

At the same time, the Catalanian process of self-determination has caused a reaction very much averse to decentralization in public opinion in many of the regions of Spain. Right-wing parties are recovering an idea of Spain which was previously connected ideally with the Franco dictatorship. While more and more conservative citizens wave their Spanish flag and ask for the unity of Spain despising any kind of federalism, far-right parties are raising their electoral expectations. This growth of the Spanish nationalism goes together with the claim for a strong legal reaction against the Catalanian leaders. The trial will be a test of strength for the Spanish judiciary. It has to show impartiality in the application of the law and the Constitution, and it has to respect the right to a fair trial of the independentist leaders. If it will, however, is far from being obvious.

In this situation, it is no exaggeration to affirm that the entire constitutional system of Spain is on trial. Whatever the final decision will be: the question about the Spanish model of democracy and state does not seem to get a firm and positive answer in the near future.

